

FILED

Clerk

District Court

FEB 16 2006

For The Northern Mariana Islands
By _____

(Deputy Clerk)

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**IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS**

UNITED STATES OF AMERICA)	CRIMINAL ACTION NO. 04-0038
)	
Plaintiff)	
)	MEMORANDUM SUPPORTING OBJECTION
v.)	TO SENTENCING BY A JUDGE OTHER THAN
)	THE TRIAL JUDGE OR ALTERNATIVELY
ERIC TUDELA MAFNAS and)	FOR CONTINUANCE OF SENTENCING
and CHARLIE KINTARO PATRIS)	
)	
Defendants)	
)	

Defendant Charlie Patris objects to being sentenced by a judge other than Judge Tashima or alternatively he requests a continuance of the sentencing until the sentencing judge has reviewed a transcript of the trial.

ARGUMENT

Normally, a convicted defendant should be sentenced by the judge who presided at trial. *United States v. Lewis*, 460 F.2d 257, 258 (9th Cir. 1972). However, FRCrP Rule 25(b)(1) provides "[a]fter a verdict or finding of guilty, any judge regularly sitting in or assigned to a court may complete the court's duties if the judge who presided at trial cannot perform those duties because of absence, death, sickness, or other disability." In this case, Judge Tashima, a visiting

1 judge presided over the trial. However, there is no indication in the record that Judge Tashima is
2 not available or otherwise can not preside over the sentencing in this case. Moreover, given that
3 Patris testified in this case and the charges against him depended essentially upon the witness
4 credibility and demeanor, Judge Tashima should be the sentencing judge since he presided over
5 the taking of the testimony and evidence.
6

7 Nevertheless, when sentencing by a different judge is proper, the new judge must take
8 steps to become familiar with the trial. *See United States v. Larios*, 640 F.2d 938, 942 - 943 (9th
9 Cir. 1981). The principal means for becoming familiar with the trial is for the new judge to order
10 and review a trial transcript. *Id. See United States v. McGuinness*, 769 F.2d 695 (11th Cir. 1985).
11 Moreover, the more a case focuses on the credibility and demeanor of witnesses, the greater the
12 need for the sentencing judge to review a trial transcript. *Larios, supra*. Likewise, when a trial
13 lasts more than a week, has numerous witnesses, and involves intricate factual details, the greater
14 the need for the sentencing judge to review a trial transcript. *McGuinness, supra*.
15

16 The trial in this case lasted about 10 days weeks and it concerned many intricate factual
17 details and charges. Most importantly, however, is the fact that witness credibility and demeanor
18 is crucial for purposes of sentencing especially since Patris testified at trial. It should also be
19 noted that the jury deliberated for 5 days and found Patris guilty on only three counts. These
20 circumstances necessitate the need for the sentencing judge to review a transcript of the trial prior
21 to imposing sentence on Patris. The record does not indicate that a trial transcript has been
22 prepared or that the sentencing judge has reviewed the trial transcript¹. This renders sentencing of
23
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26 ¹ It is noted that the prosecution ordered a transcript of the testimony of Cal Cabrera and submitted
27 portions of it in support of its motion to have Mafnas deemed a ringleader. The submitted
28

1 Patris by a judge who did not preside at trial improper. *Larios, supra; McGuinness, supra.*

2
3 **CONCLUSION**

4 Judge Tashima should serve as the sentencing judge since he presided over the trial and
5 there is not any indication in the record that he is unable to preside over the sentencing. If
6 sentencing is to imposed by a judge who did not preside over the trial, then sentencing should be
7 continued until the sentencing judge has obtained and reviewed the transcript of the trial.
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27 portions do not apply to the charges for which Patris was convicted.
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